

associated with the number porting administration center and service management system as directed by LNP. The Prime Vendor shall provide access to all such services on a nondiscriminatory basis.

(s) "Treasury Regulations" shall include proposed, temporary and final regulations promulgated under the IRC.

1.2 Rules of Construction. Unless the context otherwise requires:

- (a) A term has the meaning assigned to it;
- (b) "Or" is not exclusive;
- (c) References in the singular or to "him," "her," "it," "itself," or other like references, and references in the plural or the feminine or masculine reference, as the case may be, shall also, when the context so requires, be deemed to include the plural or singular, or the masculine or feminine reference, as the case may be;
- (d) References to Articles and Sections shall refer to articles and sections of this Agreement, unless otherwise specified; and
- (e) The headings in this Agreement are for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent, or intent of this Agreement or any provision thereof.

1.3 Effect of Agreement; Severability and Reformation. It is the express intention of the Members that, except to the extent a provision of this Agreement expressly incorporates federal income tax rules by reference to the IRC or the Treasury Regulations or is expressly

prohibited or ineffective under the Illinois Act, this Agreement shall govern the relations among the Members in their capacities as Members. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent, (a) such provision shall be ineffective to the extent, and only to the extent, of such unenforceability or prohibition and shall be enforced to the extent permitted by law; (b) such unenforceability or prohibition in any jurisdiction shall not invalidate or render unenforceable such provision as applied (i) to other persons or circumstances or (ii) in any other jurisdiction; and (c) such unenforceability or prohibition shall not affect or invalidate any other provision of this Agreement. To the extent any provision of this Agreement is prohibited or ineffective under the Illinois Act, this Agreement shall be considered amended to the least degree possible in order to make this Agreement effective under the Illinois Act. In the event the Illinois Act is subsequently amended or interpreted in such a way as to make valid any provision of this Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

To the extent any provision of this Agreement is held invalid or unenforceable, the Members shall negotiate, in good faith, concerning an amendment to this Agreement that will achieve, to the extent possible consistent with applicable law, the intended effect of the invalid or unenforceable provision.

## **Article II**

### **Formation of Company**

2.1 **Formation.** The Company was organized by executing and delivering the Articles of Organization to the Illinois Secretary of State in accordance with and pursuant to the Illinois Act.

2.2 Name. The name of the Company is LNP, L.L.C.

2.3 Principal Office. The Company's initial principal office shall be at AT&T, 227 West Monroe Street, Chicago, Illinois 60606. The Company may locate its principal office at any place or places within the State of Illinois as the Members may from time to time deem advisable.

2.4 Resident Agent and Office. The Company's initial registered office of its registered agent shall be at 208 South LaSalle, Chicago, Illinois, and the name of its initial registered agent at such address shall be CT Corporation System. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Illinois Secretary of State pursuant to the Illinois Act.

2.5 Term. The term of the Company shall be fifty (50) years from and after the date of the formation of the Company in accordance with and pursuant to the Illinois Act, unless the Company is earlier dissolved in accordance with either the provisions of this Agreement or the Illinois Act.

### **Article III**

#### **Business and Nature of the Company**

3.1 Permitted Businesses. The business of the Company shall be:

(a) To issue a Request For Proposals ("RFPs") to solicit bids from vendors interested in entering into the Master Contract(s) to perform the functions of the Prime Vendor(s);

(b) To develop and implement procedures for reviewing bids from vendors responding to the RFP and selecting the Prime Vendor(s);

(c) To ratify, after a bid is selected and before execution of the Master Contract(s), the award of the Master Contract(s) to the Prime Vendor(s);

(d) To negotiate and execute the Master Contract(s) and to negotiate and execute other contracts for goods or services, to negotiate changes in terms and conditions of the Master Contract(s) and any other contract, to renew or rebid the Master Contract(s) and any other contract, and to terminate the Master Contract(s) and any other contract as circumstances require;

(e) To supervise and oversee the Prime Vendor(s) as well as any subcontractor or vendor to ensure compliance with Master Contract(s) requirements;

(f) To own, license or otherwise control any or all intellectual property rights and any other proprietary rights associated with local number portability technology and all confidential information associated with the activities of the LNP, pursuant to the terms and conditions set forth in Exhibit B;

(g) To purchase or own such facilities and other assets as the LNP may, from time to time, reasonably require for this business; and to exercise all other powers necessary to or reasonably related to the LNP's business that may legally be exercised by limited liability companies under the Illinois Act;

(h) To engage in all activities necessary, customary, convenient, incidental or related to any of the foregoing; and

(i) The activities of the Company may be expanded so that membership in the Company is available with respect to wireline and wireless telecommunications carriers or in

other areas or territories, provided that appropriate amendments to this Agreement are adopted with the Extraordinary Majority Vote of the Members.

3.2 No Partnership Intended for Non-Tax Purposes. The Members have formed the Company under the Illinois Act, and expressly do not intend hereby to form a partnership under any state partnership act or limited partnership act. The Members do not intend to be partners one to another, or partners as to any third party.

## **Article IV**

### **Rights and Obligations of Members**

#### **4.1 Membership Interest and Voting Rights.**

(a) Except as otherwise provided in this Agreement, each Member shall have and retain a Membership Interest equal in every respect to the Membership Interest of any other Member, and such Membership Interest shall entitle a Member at all times to one vote, and thus, equal voting power, on all matters set forth in this Agreement requiring the vote of Members.

(b) In the event that any Member is affiliated with one or more other Members, such affiliated Member group shall collectively be entitled to only one vote on all matters set forth in this Agreement requiring the vote of Members; such vote to be cast by one of the Members within the affiliated group as designated in writing by such group. For purposes of this Agreement, a Member is affiliated with another Member if such Member directly or indirectly controls, is controlled by, or is under direct or indirect common control with such other Member. A Member shall be deemed to control another Member if such Member possesses, directly or indirectly, the power (i) to vote 10% or more of the securities having ordinary voting power for the election of directors of such other Member or (ii) to direct or

cause direction of the management and policies of such other Member, whether through the ownership of voting securities, by contract or otherwise.

(c) Any Member qualifying for membership under Section 11.1 that does not  
commence porting numbers in Illinois within either: (1) 9 months from the date such Member declares to the LNP its intent to port numbers in Illinois, if such declaration is made in writing after the first date any local exchange carrier utilizes the system under the Master Contract(s) to port numbers, or (2) 9 months after the first date any local exchange carrier utilizes the system under the Master Contract(s) to port numbers, if the Member declares to the LNP its intent to port numbers in Illinois at a time when local number portability is not available in Illinois, shall relinquish all its voting rights on all matters set forth in this Agreement requiring the vote of Members until such time as it commences porting numbers in Illinois. During the time that voting rights are relinquished, such Member may continue as a non-voting Member of the Company.

4.2 Limitation of Liability. No Member shall be personally liable to creditors of the Company for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, beyond such Member's Capital Contributions, except as otherwise provided by law.

4.3 Nature of Interests. There shall not be limited liability company interests in the Company other than Membership Interests as defined in this Agreement.

4.4 Access to Company Books and Records. In accordance with Section 9.3 herein, the Members shall maintain and preserve, during the term of the Company, the accounts, books and other relevant Company documents. Upon reasonable request, each Member or its duly authorized representative shall have the right, during ordinary business hours, as reasonably

determined by the Members, to inspect and copy Company books and records at the requesting Member's expense, for any purpose reasonably related to the Member's Membership Interest.

**4.5 Priority and Return of Capital.** Except as otherwise expressly provided in this Agreement, no Member shall have priority over any other Member, either for the return of Capital Contributions or for net profits, net losses, or distributions.

**4.6 Internal Dispute, Review, Arbitration and Mediation.** In the event of a dispute or disagreement regarding a decision or action of the Members as to any material matter, the Members may unanimously agree to submit the dispute to binding arbitration in accordance with procedures to be agreed upon by the Members. If binding arbitration is not pursued, any Member shall seek review or mediation of such decision or action by the Commission. After consultation with the Commission Staff, the Member seeking review or mediation of such decision or action shall file an appropriate petition, letter, pleading or other request for action in accordance with applicable rules, if any, of the Commission within 30 calendar days of a decision or action by the Members. Thereafter, the Members will participate in good faith in any proceeding convened by the Commission for the purpose of resolving the matters in issue and will comply with the decisions of the Commission as may be appropriate. However, the action that is the subject of the review or mediation shall not be delayed or postponed unless otherwise agreed by the Members or unless otherwise ordered by the Commission. If the Commission determines that it does not have legal jurisdiction or is unable for any other reason to review or mediate the matter, the Members may obtain final resolution of the matter by submitting to it binding arbitration in accordance with procedures to be agreed upon by the Members, or may pursue other lawful remedies. For purposes of this paragraph, "material matter" means a matter of sufficient magnitude as to impose a significant impact upon any aspect

of the business of the Company or upon any of its Members regarding their participation in matters that are the subject of the business of the Company or related thereto, either collectively, individually or upon certain Members as a group. "Significant impact" includes but is not limited to matters of financial, operational, legal, regulatory or personnel-related concern pertaining to the business of the Company or matters related thereto. For purposes of this paragraph, "material" does not refer to any financial standard of materiality as applied in the administration of generally accepted accounting practices. The provisions of Section 4.6 shall not be construed as limiting such legal and procedural remedies as may be otherwise available to any Member. Section 4.6 shall not be applicable to, and thus the remedies provided under Section 4.6 shall not be available for, review or mediation of disputes or disagreements concerning the LNP's selection, ratification, approval, termination or renewal of the Prime Vendor(s), in connection with any aspect of the Prime Vendor(s) performance under the Master Contract(s).

4.7 No Preemptive Rights. No Member shall have any preemptive or preferential right, including any such right with respect to (a) additional Capital Contributions; (b) issuance or sale of Membership Interests, whether unissued or hereafter created; (c) issuance of any obligations, evidences of indebtedness or other securities of the Company convertible into or exchangeable for, or carrying or accompanied by any rights to receive, purchase or subscribe to, any such unissued Membership Interest; (d) issuance of any right of, subscription to or right to receive, or any warrant or option for the purchase of, any of the foregoing securities; or (e) issuance or sale of any other securities that may be issued or sold by the Company.



## **Article V**

### **Rights and Duties of, Designation and Election of, and Conduct of Business by Members**

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**5.1 Management.** The business and affairs of the LNP shall be managed by the Members. The Members shall in all cases act collectively as provided in this Article V, and no Member acting individually shall be the agent of the LNP or shall have authority to bind the LNP and no debt shall be contracted or liability incurred by or on behalf of the LNP, except by the Members acting collectively as provided in this Article V or by one or more agents or employees of the LNP acting pursuant to the authority granted to them by the Members. The Members shall, by an Extraordinary Majority Vote, appoint officers of the Company who, to the extent provided by the Members of the Company or this Agreement, may have and may exercise all the powers and authority of the Members in the conduct of the business and affairs of the Company.

**5.2 Meetings.** Meetings of the Members, for any purpose or purposes, shall be called by at least two (2) Members eligible to vote.

**5.3 Place of Meetings.** The Members may designate any place, either within or outside the State of Illinois, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company in the State of Illinois.

**5.4 Notice of Meetings.** Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than sixty (60) days before the date of the meeting unless otherwise provided,

either personally or by mail, by or at the direction of the Members calling the meeting, to each Member entitled to vote at such meeting.

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5.5 Record Date. For the purpose of determining Members entitled to notice of or

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to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is provided pursuant to Section 13.2 or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

5.6 Quorum. Members holding at least an Extraordinary Majority Vote in the Company represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Members so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for another meeting, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Members whose absence would cause less than a quorum.

**5.7 Manner of Acting.**

(a) If a quorum is present, the affirmative vote of a majority of the Members so represented shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Articles of Organization or by this Agreement.

(b) Notwithstanding the provisions of Section 5.7(a), the ratification, renewal, amendment or termination of a Master Contract(s) to the Prime Vendor(s) (except as provided in Section 5.7(c)(i)), requires the Extraordinary Majority Vote of Members having no direct material financial interest in the Master Contract(s).

(c) Notwithstanding the provisions of Sections 5.7(a) and (b), an Extraordinary Majority Vote is required to effect the following actions:

(i) to amend the Master Contract(s) or to otherwise contract to provide an enhanced feature (i.e., a service which is not part of the Master Contract(s)); provided, however, that an amendment or contract for

1. an enhanced feature for which the development costs exceed \$400,000 in any twelve (12) month period, or
2. an enhanced feature whose development cost exceeds \$750,000 over its lifetime, or
3. any amendment for an enhanced feature which would cause the cost of all enhanced features approved in a twelve-month period to exceed \$400,000,

must have the unanimous approval of all members present and eligible to vote; and that written notice of the scheduled vote on the enhanced feature is issued to

all members one month prior to the date of the meeting at which the enhanced feature is voted upon. Development costs for an enhanced feature requested by and paid for by an individual Member shall not be included in these amounts.

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Development costs shall include costs recovered in upfront fees, in service charges, or otherwise; and

(ii) to amend this Agreement provided, however, that an amendment to Section 5.7(c)(i) shall require the unanimous vote or unanimous written consent of all Members eligible to vote.

(d) The Company upon Majority vote of the Members may authorize the Prime Vendor(s) to provide an enhanced feature at the instance of a Member if either:

(i) (a) such enhanced feature does not require the incurring of any cost or increase any cost to those purchasing number porting or other goods and services made available by the Prime Vendor(s) of the system; (b) the making of such enhanced feature does not delay the commencement or completion of enhanced features to the system authorized by at least an Extraordinary Majority Vote of the Members, (c) such enhanced feature does not render the system less useful to any Member, and (d) the benefit of such enhanced feature shall be made available to all users, on the same, uniform terms and conditions on which the benefits of such enhanced features are made available to the requesting Member or any other Member, without discrimination, provided that the subsequent users reimburse the original requesting Member(s) their proportionate share of the upfront development costs paid for such enhanced feature, if any, or

(ii) (a) the cost of such enhanced feature is funded entirely by the Member or Members seeking such enhanced feature in accordance with the funding and funding recovery methods established with the Majority Approval of the Members, (b) the making of such enhanced feature does not increase any cost to those purchasing number porting or other goods and services made available by the Prime Vendor(s) of the system, (c) the provision of such enhanced feature does not delay the commencement or completion of to the system authorized by at least an Extraordinary Majority vote of the Members, (d) such enhanced feature does not render the system less useful to any Member and (e) the benefit of such enhanced feature shall be made available to all users, on the same, uniform terms and conditions on which the benefits of such enhanced features are made available to the requesting Member or any other Member, without discrimination, provided that the subsequent users reimburse the original requesting Member(s) their proportionate share of the upfront development costs paid for such enhanced feature, if any.

The Company may otherwise condition its authorization to the Prime Vendor(s) to provide an enhanced feature to the System to be made at the instance of a Member in accordance with this Section 5.7(d) on such reasonable terms and conditions as the Company may determine appropriate to achieve the purposes of this Agreement, including, without limitation, (1) a requirement that the enhanced feature be made within a schedule which does not interrupt the continuing utility of the System to all Members and (2) a requirement that the enhanced feature be made within a schedule which does not delay the completion of enhanced features previously authorized by the Company.

(e) Notwithstanding the provisions of Sections 5.7(a), (b) and (c), the unanimous vote or written consent of all Members eligible to vote is required to effect the following actions:

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(i) Formation or acquisition of subsidiaries and entering into partnerships, limited liability company agreements, and joint ventures.

(ii) Incurrence of (1) any indebtedness (other than trade payables incurred in the ordinary course of business) or lease, guaranty, indemnification or suretyship obligations, or (2) any indebtedness to a Member or an affiliate of a Member.

(iii) The approval of (1) the merger or consolidation of the Company with or into another Entity; (2) the sale, exchange, or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan; and (3) the reorganization of the Company pursuant to an event of bankruptcy.

(iv) Payment of a distribution of the Company's moneys or other assets to any Member prior to dissolution and termination of the Company.

(v) Issuance of any public policy or public statement by the Company.

(vi) Entry into any new line of business.

(f) An amendment to any section or matter calling for a unanimous vote shall require the unanimous vote or unanimous written consent of all members eligible to vote.

5.8 Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall

be filed with the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

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**5.9 Compensation; Reimbursement of Expenses.** No compensation shall be paid to any member by the Company or any Member. However, a Member may be reimbursed for any authorized expenses reasonably incurred by it in conjunction with the business and affairs of the Company.

**5.10 Conference Telephone.** Any Member may participate in a meeting of the Members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting by means of such equipment shall constitute presence in person at such meeting.

**5.11 Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

**5.12 Waiver of Notice.** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice.

## **Article VI**

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### **Duties and Limitation of Liability Members, Officers and Persons Serving on Advisory Committees; Indemnification**

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6.1 **Duties of Members; Limitation of Liability.** The Members shall perform their duties in good faith, in a manner they reasonably believe to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Member or officer shall not have any liability to the Company or any other Member by reason of being or having been a Member or officer. A Member or officer shall not be liable to the Company or to any other Member or officer for any loss or damage sustained by the Company or any other Member or officer, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, or a wrongful taking by the Member or officer.

6.2 **Members Have No Exclusive Duty to Company.** The Members shall not be required to manage the Company as their sole and exclusive function and they may have other business interests and may engage in other investments or activities in addition to those relating to the Company. Neither the Company nor any other Member shall have any right, by virtue of this Agreement, to share or participate in such other business interests, investments or activities of a Member or the income or proceeds derived therefrom. No Member shall incur liability to the Company or to any other Member solely by reason of engaging in any such other business, investment or activity.



### **6.3 Protection of Members and Officers.**

(a) As used in this Section 6.3, the term "Protected Party" refers to the Members and officers of the Company.

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(b) To the extent that, at law or in equity, a Protected Party has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Protected Party, a Protected Party acting under this Agreement shall not be liable to the Company or to any other Protected Party for its good faith reliance on the provisions of this Agreement, the records of the Company, and such information, opinions, reports or statements presented to the Company by any person as to matters the Protected Party reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other fact pertinent to the existence and amount of assets from which distributions to Members might properly be paid. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Protected Party to the Company or to any other Protected Party otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Protected Party.

(c) Whenever in this Agreement a Protected Party is permitted or required to make a decision (i) in its "discretion" or under a grant of similar authority or latitude, the Protected Party shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person, or (ii) in its "good faith" or under another express standard, the Protected Party shall act under such express standard and

shall not be subject to any other or different standard imposed by this Agreement or other applicable law.

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6.4 Indemnification and Insurance.

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(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative or otherwise and whether formal or informal (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Member, officer or agent of the Company or is or was serving at the request of the Company as a manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, whether the basis of such proceeding is alleged action in an official capacity as a Member, officer or agent or in any other capacity while serving as such a Member, officer or agent of the Company, shall be indemnified and held harmless by the Company, if the Member, officer or agent acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the Company and, with respect to any criminal proceeding, such Member, officer or agent had reasonable cause to believe that the act or omission was lawful.

(b) Advancement of Expenses. Expenses (including attorneys' fees) incurred by an indemnified person in defending any proceeding shall be paid in advance of the proceeding's final disposition upon receipt of an undertaking by such person to repay the amount so advanced if the person is ultimately found not to be entitled to indemnification under Section 6.4(a).

(c) Non-Exclusivity of Rights. The right to indemnification and the advancement of expenses conferred in this Section 6.4 shall not be exclusive of any right which any

person may have or hereafter acquire under any statute, provision of this Agreement, contract, agreement, vote of Members or otherwise. The Members and officers are expressly authorized to adopt and enter into indemnification agreements for Members, officers and advisory committee members.

(d) Insurance. The Members may cause the Company to purchase and maintain insurance for the Company or its Members and officers on behalf of any person who is or was or has agreed to become a Member or officer advisory committee member or agent of the Company or is or was serving at the request of the Company as a manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred in any such capacity or arising out of such status, whether or not the Company would have the power to indemnify such person.

(e) Effect of Amendment. No amendment, repeal or modification of this Section 6.4 shall adversely affect any rights hereunder with respect to any act or omission occurring prior to the date when such amendment, repeal or modification became effective.

6.5 Duties of Persons Serving on Advisory Committees: Limitation of Liability: Indemnification. The Members shall have the right to form advisory committees. Persons serving on an advisory committee, whether or not a Member or officer, shall perform their duties in good faith, in a manner they reasonably believe to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person serving on an advisory committee who so performs shall not have any liability to the Company or to any Member or officer and shall be entitled to indemnification and insurance in the manner provided for Members in this Article VI. A person

serving on an advisory committee shall not be liable to the Company or to any Member or officer for any loss or damage sustained by the Company or any Member or officer, unless the loss or damage was the result of fraud, deceit, gross negligence, willful misconduct, or a wrongful taking by such person.

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## **Article VII**

### **Officers**

7.1 Officers of Company. The officers of the Company shall consist of a president, a treasurer and a secretary, or other officers or agents as may be elected and appointed by the Members. The officers shall act in the name of the Company and shall supervise its operation under the direction and management of the Members, as further described below.

7.2 Election and Term of Office. The officers of the Company shall be elected annually by the Members by a Majority Vote, in a manner such that the Members shall rotate offices each year. Vacancies may be filled or new offices created and filled at any meeting of the Members. Each officer shall hold office until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. Election or appointment of an officer or agent shall not of itself create contract rights.

7.3 Removal. Any officer or agent may be removed by the Members whenever in their judgment the best interests of the Company would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

7.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Members for the unexpired portion of the term.

7.5 President. The president shall be the chief executive officer of the Company and shall preside at all meetings of the Members. He or she shall have such other powers and perform such duties as are specified in this Agreement and as may from time to time be assigned to them by the Members of the Company.

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7.6 The Treasurer. The treasurer shall be the chief financial officer of the Company. The treasurer shall not be required to give a bond for the faithful discharge of his or her duties. He or she shall: (i) have charge and custody of and be responsible for all funds and securities of the Company; (ii) in the absence of the president, preside at meetings of the Members, (iii) receive and give receipts for moneys due and payable to the Company from any source whatsoever, and deposit all such moneys in the name of the Company in such banks, trust companies or other depositaries as shall be selected by the Members of the Company; and (iv) in general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or by the Members of the Company.

7.7 The Secretary. The secretary shall: (i) keep the minutes of the Members' meetings in one or more books provided for that purpose; (ii) see that all notices are duly given in accordance with the provisions of this Agreement or as required by law; (iii) be custodian of Company records; (iv) keep a register of the post office address of each Member which shall be furnished to the secretary by such Member; (v) certify the resolutions of the Members, and other documents to the Company as true and correct thereof; (vi) in the absence of the president and treasurer, preside at meetings of the Members and (vii) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or the Members of the Company.

## **Article VIII**

### **Contributions to the Company; Assessments for Administrative Expenses; and Capital Accounts**

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#### **8.1 Capital Contributions.**

(a) Each Member shall make an Initial Capital Contribution to the Company of cash within 30 days of its admission as a Member to the Company in an amount equal to \$10,000.

(b) Other than the Initial Capital Contributions of the Members pursuant to Section 8.1(a), no Member shall have any obligation to make any further Capital Contributions or to lend any funds to the Company; *provided, however*, that the foregoing shall not be construed to limit the obligation of any Member to pay its share of assessments made under Section 8.2.

#### **8.2 Assessments for Administrative Expenses.**

(a) As used in this Article VIII, the term "Administrative Expenses" shall mean those expenses incurred by the Company in the ordinary course of its operations, including but not limited to expenses incurred for insurance, bank accounts and banking services, resident agents of the Company, professional services, postage, letterhead, office supplies, and materials and services related to the issuance of any request for proposals.

(b) Each Member shall be obligated to pay in cash to the Company from time to time its proportionate share of all assessments for Administrative Expenses of the Company. Assessments for Administrative Expenses under this Section 8.2 shall be subject to the following terms and conditions:

(1) Assessments may be made only for funds required by the Company to pay Administrative Expenses actually paid or incurred by the Company or reasonably anticipated to be due and payable by the Company within 180 days of the date on which the capital call is made.

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(2) Assessments for Administrative Expenses may be made only for amounts approved by a Majority Vote.

(3) Assessments under this Section 8.2 shall be made no more frequently than once per calendar month.

(4) Assessments under this Section 8.2 shall not be considered Capital Contributions to the Company and a Member's Capital Account shall not be credited with the amount of any assessments paid by it to the Company hereunder.

(c) Assessments for Administrative Expenses under this Section 8.2 shall be made by the treasurer or secretary by delivery of written notice (an "Assessment Notice") to each Member describing (i) the total amount then being assessed to the Members for Administrative Expenses, (ii) the uses and applications of the assessments, (iii) that Member's share of the total assessment then being made, and (iv) the date the assessment is required to be paid by the Members, which date shall not be less than 30 days after the Assessment Notice has been given.

(d) Each Member admitted after the date of this Agreement shall pay to the Company upon its admission its pro rata share of Administrative Expenses subject to any adjustment at any time agreed upon by the Members.

**8.3 Capital Accounts.** An individual capital account (the "Capital Account") shall be maintained for each Member. The Capital Account of a Member shall consist of its initial Capital Contribution and shall be *increased by* (i) the amount of any additional Capital Contributions and (ii) the amount of all net profits (and any item thereof) allocated to such Member, and *decreased by* (iii) the amount of all distributions to such Member and (iv) the amount of all net losses (and any item thereof) allocated to such Member. The Capital Accounts shall be determined, maintained and adjusted in accordance with Section 704(b) of the IRC and the Treasury Regulations thereunder. If the Company determines that the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.3 should be modified in order to comply with Code Section 704(b) and the Treasury Regulations, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.3, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members as set forth in this Agreement.

**8.4 General Rules Relating to Capital of the Company.**

(a) No Member shall be personally liable for the return of the Capital Contributions of the Members, or any portion thereof, it being expressly understood that such return of contributions, if any, shall be made solely from Company assets.

(b) No Member shall have the right to withdraw its Capital Contribution or receive any return of its Capital Contributions. No Member shall have any right to demand or receive property (in return of its Capital Contributions).



## **Article IX**

### **Allocations, Income Tax, Distributions, Elections, Books and Records and Returns**

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#### **9.1 Allocation of Profits and Losses.**

(a) Net profits or net losses of the Company, as the case may be, shall be determined for each Fiscal Year of the Company in accordance with generally accepted accounting principles as from time to time in effect. Net profits, net losses for each Fiscal Year and all items of income, gain, loss or deduction shall be allocated equally to the Members.

(b) Except as may be otherwise required under the IRC or the Treasury Regulations thereunder, all items of income, gain, loss and deduction (and items thereof) for income tax purposes shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Section 9.1(a) were allocated to the Members hereunder.

#### **9.2 Distributions Prior to Dissolution and Termination.**

(a) Prior to the dissolution and termination of the Company, no distributions of Distributable Cash shall be made by the Company to the Members without the unanimous consent of the Members. Any distributions of Distributable Cash under this Section 9.2 shall be made equally to the Members.

(b) No distributions shall be made and paid if, after the distribution is made either (i) the Company would be insolvent; or (ii) the net assets of the Company would be less than zero. The Members may base a determination that a distribution may be made under Section 9.2 in good faith reliance upon a balance sheet and profit and loss statement of the Company fairly reflecting the financial condition of the Company represented to be correct by